Raja Abdul Rahman bin Raja Abdul Aziz v Exxonmobil Exploration and Production (M) Inc

COURT OF APPEAL (PUTRAJAYA) — CIVIL APPEAL NO W-02–1261 OF 2010
KN SEGARA, RAMLY ALI AND AZAHAR MOHAMED JJCA
10 AUGUST 2012

Civil Procedure — Judicial review — Application for — Function of Industrial Court — Voluntary Separation Scheme — Appellant being employee entering into VSS with employer — Employee later dismissed — Whether punishment of dismissal without just cause — Industrial Relations Act 1967 s 20

The appellant appealed against the decision of the High Court which had quashed the award of the Industrial Court. The appellant, a draftsman in the respondent company, accepted the appellant's request to leave the company on the voluntary separation scheme ('VSS'). The appellant would receive a total separation payment benefit of RM151,445.39. However, on 27 June 2003, just four days before his employment was to cease under the VSS (on 1 July 2003), the appellant was suspended from work pending investigations on alleged misconducts by the appellant. Subsequently, the appellant was charged for the following offences: (i) lying during an interview in the course of formal investigations of the alleged misconduct; (ii) removal of computer monitor and CPU from company library without permission and placing them in a box with a view to taking them out of the possession of the respondent. A domestic inquiry convened by the respondent found the appellant guilty of misconduct and the appellant's employment was terminated by the respondent. The respondent denied the appellant the benefits of the VSS promised to him earlier. The only issue before this court was whether the Industrial Court chairman had erred in coming to the conclusion that the punishment of dismissal was without just cause or excuse.

Held, allowing the appeal with costs:

(1) The High Court judge failed to appreciate the statutory duty of the Industrial Court chairman when the High Court judge stated that it was not for the Industrial Court to decide whether the punishment was fair or not and the best person to judge the seriousness of the misconduct is the employer himself. On this issue, the cases dealing with disciplinary proceedings relating to public officers under the Federal Constitution and general orders governing public officers, and the cases dealing with private sector employers/employees under the Industrial Relations Act 1967 ('Act') must be distinguished (see para 21).

(2) The Industrial Court chairman had acted within the requirements of the statutory provisions in the Act and the principles set out in several Federal Court cases touching on the issues before him. He had given due consideration to local Industrial Court decisions as well as cases from the common law jurisdiction. He was duty bound to investigate the facts notwithstanding any domestic inquiry conducted by the respondent, analyse and scrutinise the facts and thereafter apply the law to those facts as found by him, including any matters affecting punishment (see para 22).

(3) Further, the Industrial Court chairman was not wrong in law when he considered that the punishment of dismissal was without just cause or excuse under the particular facts and circumstances of the appellant's case, and thereafter awarded the appellant total compensation in the sum of RM161,574(RM92,328 + RM69,246), being back wages and compensation, in lieu of reinstatement (see para 23)

(4) In a judicial review application from an award of the Industrial Court pursuant to a s 20(3) of the Act, it is not the High Court's function to review and reassess evidence or draw its own inferences as to facts from the evidence before the Industrial Court, unless the chairman's decision/award can be said to have one or more of the following infirmities, namely: (i) illegality; (ii) irrationality or 'Wednesbury unreasonableness'; (iii) procedural impropriety. In this case, the award of the Industrial Court did not suffer from any of the above infirmities (see paras 24–25).

[Bahasa Malaysia summary

Perayu merayu terhadap keputusan Mahkamah Tinggi yang telah membatalkan award Mahkamah Perusahaan. Perayu, seorang pendraf pelan di syarikat responden, telah menerima permintaan perayu untuk meninggalkan syarikat melalui skim pemisahan sukarela ('SPS'). Perayu akan menerima bayaran faedah pemisahan faedah sebanyak RM151,445.39. Walau bagaimanapun, pada 27 Jun 2003, hanya empat hari sebelum tamat perkhidmatannya di bawah SPS (pada 1 Julai 2003), perayu telah digantung berkerja sementara menunggu siasatan atas dakwaan salah laku. Selepas itu, perayu telah dituduh bagi kesalahan berikut: (i) menipu semasa temu bual penyiasatan formal dijalankan terhadap tuduhan salah laku; (ii) mengeluarkan monitor komputer dan CPU dari perpustakaan syarikat tanpa kebenaran dan meletakkannya di dalam kotak dengan niat untuk mengambilnya daripada milikan responden. Satu siasatan domestik yang diadakan oleh responden mendapati bahawa perayu bersalah atas salah laku dan perkhidmatan perayu ditamatkan oleh responden. Responden menafikan perayu daripada manfaat SPS yang telah dijanjikan kepadanya. Isu utama di hadapan mahkamah ini

ialah sama ada pengerusi Mahkamah Perusahaan telah terkhilaf dalam memutuskan bahawa hukuman pemecatan adalah tanpa alasan yang adil.

Diputuskan, membenarkan rayuan dengan kos:

(1) Hakim Mahkamah Tinggi gagal untuk menimbangkan kewajipan statutori pengerusi Mahkamah Perusahaan apabila beliau menyatakan bahawa ia bukan bagi Mahkamah Perusahaan untuk memutuskan sama ada hukuman tersebut adil atau tidak dan pihak yang terbaik untuk menilai keseriusan salah laku adalah majikan sendiri. Mengenai isu ini, kes-kes yang berurusan dengan prosiding tatatertib berhubung dengan pegawai-pegawai awam di bawah Perlembagaan Persekutuan dan aturan am yang mentadbir pegawai awam, dan kes-kes berurusan dengan pekerja/majikan sektor swasta di bawah Akta Perhubungan Perusahaan 1967 ('Akta') mesti dibezakan (lihat perenggan 21)

(2) Pengerusi Mahkamah Perusahaan telah bertindak dalam keperluan peruntukan berkanun dalam Akta dan prinsip-prinsip yang dinyatakan dalam beberapa kes Mahkamah Persekutuan yang menyentuh isu-isu di hadapannya. Beliau telah memberikan pertimbangan yang sewajarnya kepada keputusan-keputusan mahkamah tempatan dan juga kes-kes daripada bidang kuasa *common law*. Beliau berkewajipan untuk menyiasat fakta walau apa pun siasatan domestik yang dijalankan oleh responden, menganalisa dan meneliti fakta-fakta dan kemudian mengguna pakai undang-undang ke atas fakta-fakta yang menjadi dapatan beliau, termasuk apa-apa perkara yang melibatkan hukuman (lihat perenggan 22)

(3) Seterusnya, pengerusi Mahkamah Perusahaan tidak salah di sisi undang-undang apabila beliau mempertimbangkan bahawa hukuman buang kerja tanpa sebab atau alasan di bawah fakta dan keadaan tertentu kes perayu, dan selepas itu mengawardkan pampasan kepada perayu berjumlah RM161,574 (RM92,328 + RM69,246), sebagai gaji kebelakangan dan pampasan, sebagai ganti pengembalian semula pekerjaan (lihat perenggan 23)

(4) Dalam permohonan semakan kehakiman daripada award Mahkamah Perusahaan di bawah s 20(3) Akta, ia bukanlah fungsi Mahkamah Tinggi untuk mengkaji dan menilai bukti atau membuat kesimpulan sendiri berkenaan fakta daripada keterangan di hadapan Mahkamah Perusahaan, melainkan jika keputusan pengerusi/ award boleh dikatakan mempunyai satu atau lebih daripada kelemahan-kelemahan berikut, iaitu: (i) menyalahi undang-undang; (ii) tidak rasional atau 'Wednesbury unreasonableness '; (iii) ketidakwajaran prosedur. Dalam kes ini, award Mahkamah Perusahaan tidak mengalami mana-mana kelemahan-kelemahan di atas (lihat perenggan 24–25)]

Notes

For a case on application for judicial review see 2(3) *Mallal's Digest* (4th Ed, 2012) para 5113.

Cases referred to

Milan Auto Sdn Bhd v Wong Seh Yen [1995] 3 MLJ 537, FC (refd)

R Rama Chandran v The Industrial Court of Malaysia & Anor [1997] 1 MLJ 145, FC (refd)

Legislation referred to

Federal Constitution art 135

Industrial Relations Act 1967 s 20, 20(3)

S Mariappen (J Azmi & Assoc) for the appellant.

Gan Khong Air (Cecilia Chiu with him) (Gan Partnership) for the respondent.

KN Segara JCA (delivering judgment of the court):

[1] The employee/appellant's appeal before us is against the decision of the High Court judge quashing the award of the Industrial Court chairman handed down on 25 May 2009 pursuant to an application for judicial review by the respondent/employer in the High Court.

[2] The appellant is an employee in the private sector and is not a public officer. Article 135 of the Federal Constitution and Chapter D of the General Orders do not apply with reference to any misconduct by the appellant.

[3] The appellant was employed as a draftsman in 1985 by the respondent.

[4] He was transferred from KL to Kerteh, Trengganu in 1987.

[5] In February, 2003, the respondent accepted the appellant's request to leave the company on the voluntary separation scheme ('VSS').

[6] The appellant was notified by the respondent that his employment would cease with effect from 1 July 2003 and he would be paid the benefits as per the VSS.

[7] The appellant would receive a total separation payment benefits of RM151,445.39.

[8] On 27 June 2003, just four days before his employment was to cease

under the VSS (on 1 July 2003), the appellant was suspended from work with effect from 30 June 2003, pending investigations on alleged misconducts by the appellant.

[9] On 16 September 2003 the respondent preferred four charges against the appellant.

[10] The four charges related to: (i) lying during an interview on 30 June 2003 in the course of formal investigations of the alleged misconduct; (ii) removal of computer monitor and CPU from company library without permission and placing them in a box with a view to taking them out of the possession of the respondent.

[11] Another employee, Mat Sabri, was jointly charged with the appellant in respect of the charge relating to the removal of the computer monitor and CPU.

[12] A domestic inquiry was conducted by the respondent on 30 September 2003 and 1 October 2003. The appellant was found guilty on three charges of misconduct.

[13] The appellant's employment was terminated by the respondent by letter dated 16 October 2003 and the respondent denied the appellant the benefits of the VSS promised to him earlier.

[14] We are of the view that the Industrial Court chairman had not erred in law when he found that the respondent had proved that the appellant was guilty of misconduct as charged.

[15] The only issue before us is whether the Industrial Court chairman had erred in coming to the conclusion that the punishment of dismissal was without just cause or excuse.

[16] The duty of the Industrial Court is set out in s 20 of the Industrial Relations Act 1967.

[17] The function of the Industrial Court is two-fold: first, to determine whether the alleged misconduct has been established and secondly, whether the proven misconduct constitutes just cause or excuse for dismissal. Failure to determine these issues would be a jurisdictional error which would merit interference by certiorari by the High Court (see *Milan Auto Sdn Bhd v Wong Seh Yen* [1995] 3 MLJ 537 at pp 537–538, Federal Court).

[18] We are satisfied that the Industrial Court chairman has considered and dealt with both these issues on their substantial merits, based on the evidence before him.

[19] We are of the view that the Industrial Court chairman, after finding that the appellant had in fact committed the misconduct, had correctly gone on to consider whether the proven misconduct constitutes just cause or excuse for the dismissal.

[20] We are satisfied that the Industrial Court chairman had taken into account the entire evidence, the facts and the circumstances at the material time and concluded the dismissal was without just cause or excuse.

[21] We are of the view that the High Court judge failed to appreciate the statutory duty of the Industrial Court chairman when the High Court judge stated that it was not for the Industrial Court to decide whether the punishment was fair or not and the best person to judge the seriousness of the misconduct is the employer himself. On this issue, we are of the view the cases dealing with disciplinary proceedings relating to public officers under the Federal Constitution and General Orders governing public officers, and the cases dealing with private sector employers/employees under the Industrial Relations Act 1967 must be distinguished.

[22] We are satisfied that the Industrial Court chairman had acted within the requirements of the statutory provisions in the Industrial Relations Act 1967 and the principles set out in several Federal Court cases touching on the issues before him. He has given due consideration to local Industrial Court decisions as well as cases from the common law jurisdiction. He was duty bound to investigate the facts notwithstanding any domestic inquiry conducted by the respondent, analyse and scrutinise the facts and thereafter apply the law to those facts as found by him, including any matters affecting punishment.

[23] We are of the view that the Industrial Court chairman was not wrong in law when he considered that the punishment of dismissal was without just cause or excuse under the particular facts and circumstances of the appellant's case, and thereafter awarded the appellant total compensation in the sum of RM161,574 (RM92,328 + RM69,246), being backwages and compensation, in lieu of reinstatement.

[24] We are of the view that the award of the Industrial Court does not suffer from any of the following infirmities, namely:

(a) illegality — that the decision maker had failed to keep strictly within the perimeters of his powers;

A (b) irrationality or 'Wednesbury unreasonableness' — that the decision was 'so outrageous in its defiance of logic or accepted moral standards that no sensible person who had applied his mind to the question to be decided could have arrived at it'; and

B (c) procedural impropriety — that the decision maker failed to observe basic rules of natural justice and or procedural rules;

to warrant the award to be set aside.

(see *R Rama Chandran v The Industrial Court of Malaysia & Anor* [1997] 1 MLJ 145).

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[25] In a judicial review application from an award of the Industrial Court pursuant to a s 20(3) of the Industrial Relations Act 1967, it is not the High Court's function to review and reassess evidence or draw its own inferences as to facts from the evidence before the Industrial Court, unless the chairman's D decision/award can be said to have one or more of the infirmities referred to above.

[26] For the above reasons the appeal is allowed. Decision of the High Court E judge set aside and award of the Industrial Court reinstated. Costs to the appellant fixed at RM20,000 here and below. Deposit refunded to the appellant.

Appeal allowed with costs.

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Reported by Ashgar Ali Ali Mohamed

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